APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT FILED JUNE 13, 2008

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08-30087
Summary Calendar

CLAYTON ANTHONY WALKER, Individually and as the Administrator of the Estate of Breanna Nicole Walker on behalf of Breanna Nicole Walker

Plaintiff-Appellant

v.

RUSS MUNSELL, Officer; DAVID HOOTER, Officer; RODNEY WALKER, Officer

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:06-CV-867

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

Appendix A

PER CURIAM:*

In the early morning of November 3, 2006, Appellant Clayton Anthony Walker ("Appellant") was pulled over by an officer of the Denham Springs Police Department for failure to use a turn signal. According to Appellant, the officer approached the vehicle, requested that he exit the vehicle, and asked for his license and registration. When Appellant turned around to reach for the glove compartment, the officer allegedly struck him from behind and maced him in the face. After other officers arrived on the scene, Appellant contends that the officers beat him, causing substantial injuries. During the altercation, one officer instructed Appellant to stop resisting arrest, to which Appellant responded that he was not resisting.

The Appellee officers, however, contest these allegations. According to Appellees, after Appellant pulled over, he took off and ran into the woods. The officer who pulled Appellant over then chased Appellant and ultimately apprehended him. Thereafter, the officers later arriving on the scene attempted to handcuff Appellant but were unable to do so because Appellant was resisting arrest. Ultimately, one of the officers maced Appellant in the face and handcuffed him.

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* Pursuant to 5th CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

Appendix A

On November 13, 2006, Appellant filed suit against the Appellee officers in federal court pursuant to 42 U.S.C. § 1983, alleging causes of action for unreasonable search and seizure and excessive force, malicious prosecution, cruel and unusual punishment, and failure to provide medical care. Subsequently, in July of 2007, Appellant was convicted in a Louisiana state court on three counts of resisting an officer and one count of failure to signal.

Based on Appellant's state court convictions, on October 1, 2007, the district court granted summary judgment in favor of Appellees on the excessive force and malicious prosecution claims pursuant to *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994).[1] The district court stated: "The [Appellant's] excessive force and malicious prosecution claims are hereby dismissed with prejudice until the *Heck* conditions are satisfied." *Walker v. Munsell*, No. 3:06-

1. *Heck* provides:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

512 U.S. at 486-87 (footnote omitted).

CV-867, 2007 WL 3377202, at *5 (M.D.La. Oct.1, 2007). Appellant now appeals.[2]

Appellant first asserts that the district court erred by failing to find that Appellees waived their *Heck* defense by not pleading it as an affirmative defense in their answer. A *Heck* defense, however, is not waived by failure to plead it as an affirmative defense and can be brought by motion at trial. *See Watson v. New Orleans City*, 275 F.3d 46, 2001 WL 1268716, at *3 (5th Cir. Oct.16, 2001) (finding that the defendant did not waive her *Heck* defense by failing to plead it as an affirmative defense).[3]

Appellant next asserts that the district court's application of *Heck* was erroneous because a favorable judgment in his suit would not necessarily invalidate his conviction for failure to signal or for resisting arrest. *See Heck*, 512 U.S. at 487 ("But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should

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2. On July 24, 2007, the district court granted summary judgment in favor of Appellees on Appellant's claim of cruel and unusual punishment. Appellant does not contest this ruling on appeal. Furthermore, Appellant voluntarily dismissed his failure to provide medical care claim after the district court declined to certify its dismissal of Appellant's excessive force claim for interlocutory appeal.

3. *Watson* arrives at this conclusion by finding that "waivers of defenses based on grounds rooted in considerations of state sovereignty are applied less harshly than other waivers." 275 F.3d 46, 2001 WL 1268716, at *3.

be allowed to proceed. . . .") (footnote omitted). Rather, Appellant asserts that his civil rights claim can coexist with his conviction for resisting arrest, as he can show that he resisted a lawful arrest and that the officers used excessive force to effectuate that arrest. Appellant's claim, however, is not that the officers used excessive force after he stopped resisting or to stop his resistance; his claim is based solely on his assertions that he did not resist arrest, did nothing wrong, and was attacked by the Appellee officers for no reason. Thus, Appellant's suit "squarely challenges the factual determination that underlies his conviction for resisting an officer," and if he prevails, "he will have established that his criminal conviction lacks any basis." *Arnold v. Town of Slaughter*, 100 F. App'x 321, 324-25 (5th Cir.2004). This type of excessive force claim is, therefore, the type of claim that is barred by *Heck* in our circuit. *Id.*; *see also DeLeon v. City of Corpus Christi*, 488 F.3d 649, 656-57 (5th Cir.2007) (holding that *Heck* barred Appellant's excessive force claim where his complaint maintained that he did not resist arrest and did nothing wrong and provided no alternative pleading or theory of recovery).

Third, Appellant argues that *Heck* does not apply because he was fined and not imprisoned following his conviction, and he consequently had no opportunity to challenge his conviction on habeas review. This circuit, however, has determined that *Heck*'s bar applies to both custodial and non-custodial § 1983 plaintiffs. *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir.2000).

Finally, Appellant contends that the district court abused its discretion in refusing to certify its dismissal of his excessive force claim for immediate appeal under Federal Rule of Civil Procedure 54(b). This argument is wholly without merit.

AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA ADJUDICATING UNOPPOSED MOTION FOR VOLUNTARY DISMISSAL DATED JANUARY 11, 2008

CIVIL ACTION NO. 3:06-867
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT

JUDGE BRADY

MAGISTRATE RIEDLINGER

CLAYTON ANTHONY WALKER, INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF BREANNA NICOLE WALKER COURT

v.

OFFICER RUSS MUNSELL, OFFICER DAVID HOOTER, and OFFICER RODNEY WALKER

ORDER ADJUDICATING UNOPPOSED MOTION FOR VOLUNTARY DISMISSAL

CONSIDERING the *Unopposed Motion for Voluntary Dismissal*, the motion is hereby GRANTED.

The only remaining claim is the Plaintiffs' claim for the failure to provide medical treatment, which is hereby dismissed with prejudice.

Appendix B

All matters having been disposed of by this Court, this matter is hereby dismissed on this entry of this Final Judgment.

Baton Rouge, Louisiana this 11th day of January, 2008.

s/ James B. Brady
Judge James B. Brady
District Judge

APPENDIX C — RULING ON MOTION FOR SUMMARY JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA FILED OCTOBER 1, 2007

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 06-867-JJB-SCR

CLAYTON ANTHONY WALKER, ET AL.

VERSUS

OFFICER RUSS MUNSELL, ET AL.

RULING ON MOTION FOR SUMMARY JUDGMENT

This matter is before the court on a renewed motion to dismiss the Plaintiffs' § 1983 claims (doc. 59) filed by Defendants Russ Munsell, David Hooter, and Rodney Walker.[1] The Plaintiffs, Clayton Anthony Walker, et al., filed an opposition (doc. 66, 71), and the Defendants filed a reply brief (doc. 69). On September 20, 2007, the court converted the renewed motion to dismiss to a motion for summary judgment (doc. 75) in light of the evidence submitted by the parties. Oral argument is not necessary in this case. The court's jurisdiction exists pursuant to 28 U.S.C. § 1331.

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1. This Court dismissed all claims against officers Gerald Parker and John Albritton on April 5, 2007 (doc. 33).

Appendix C

Factual Background

The Plaintiff filed the instant action following his arrest for failure to use a turn signal. The Plaintiff alleges that he was kicked and beaten after being pulled over by the police. The Plaintiff contends that he was struck from behind after being asked for his driver's license, and he does not remember what happened subsequently because he blacked out.

The Defendants in this case contest these allegations The Defendants testified that after pulling the Plaintiff over for failure to signal, the Plaintiff took off running into the woods. After catching the Plaintiff, Officer Munsell testified that he pushed the Plaintiff to the ground and held him until the other officers arrived. Corporal Walker testified that he attempted to handcuff the Plaintiff who resisted by hiding his hands under his chest. Officer Munsell then administered Freeze-Plus-B spray to the Plaintiff's face so that Corporal Walker could handcuff the Plaintiff.

In July of 2007, the Plaintiff was convicted in a Louisiana state court on three counts of resisting arrest and one count of failure to signal. The Plaintiff asserts causes of action for violation of his civil rights under 42 U.S.C. § 1983 including: (1) unreasonable search and seizure and excessive force; (2) deprivation of his Fourteenth Amendment to be free from malicious prosecution; and (3) violation of his substantive due process rights under the Fourteenth Amendment based on the Defendants' alleged failure to tend to the Plaintiff's medical needs as a pretrial detainee.

Appendix C

In its ruling of August 24, 2007, this court held that the Plaintiff's failure to provide medical care claim was timely and not subject to dismissal. This court also asked the parties to supplement the record in light of the state criminal proceedings so that the court could rule on the Plaintiff's other claims.

Objection to Plaintiffs' Improper Exhibit

in the Defendants' Reply Memorandum in Support of their Renewed Motion to Dismiss or Stay (doc. 69), the Defendants object to Plaintiffs' submission of an unauthenticated letter to support their opposition to dismissal. Plaintiffs have corrected the alleged defect by refiling an authenticated letter, so the court will overrule this objection.

Heck v. Humphrey Standard

Under the rule of *Heck v. Humphrey*, a plaintiff seeking to recover for alleged constitutional violations with respect to conviction, imprisonment, or other harms caused "whose unlawfulness would render a conviction or sentence invalid . . . must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey,* 512 U.S. 477, 486-87 (1994). The "core of *Heck* is a proscription against allowing a civil tort suit to cast doubt on a criminal conviction." *Bush v. Strain,*

2004 U.S. Dist. LEXIS 9358, *11 (E.D. La. 2004). However, if there is no contradiction to the criminal conviction, the claim may proceed. *Drake v. City of Pearl, Mississippi,* 494 F. Supp. 2d 437 (S.D. Miss. 2007). if, however, the civil claim would contradict the conviction or sentence and the plaintiff has failed to satisfy the *Heck* requirements, the Fifth Circuit directs lower courts to dismiss the party's claims "with prejudice to their being asserted again until the *Heck* conditions are met." *DeLeon v. City of Corpus Christi,* 488 F.3d 649, 657 (5th Cir. 2007).

Analysis

1. *Heck* as an Affirmative Defense

In the Plaintiffs' Opposition to the Renewed Motion to Dismiss (doc. 66), the Plaintiffs contend that the Defendants have waived *Heck* as a defense, because it was not raised as an affirmative defense in the Answer. The Plaintiffs argue that the *Heck* rule falls under the residual clause of Federal Rule of Civil Procedure 8(c) which requires a party to "set forth affirmatively . . . res judicata, . . . and any other matter constituting an avoidance or affirmative defense." Fed. Rule Civ. P. 8(c).

Courts interpreting the residual clause have included "qualified immunity, exhaustion of administrative remedies, and ERISA preemption" as affirmative defenses which must be raised in the answer. *Quintana v. Gates,* 2004 WL 1661540, *4 (C.D. Cal. 2004). However, courts have not extended the residual clause

to explicitly cover the *Heck* doctrine. *Id.* at *5. Defenses which concern the court's jurisdiction are not waived if omitted from the answer, but may be raised by motion. Fed. Rule Civ. P. 12(b). The *Quintana* court explains, "As a rule of accrual, the *Heck* doctrine more closely resembles a jurisdictional barrier, because if the claim has not accrued, then the court would not have subject matter jurisdiction over the claim." *Quintana*, 2004 WL 1661540, at *5. Therefore, in the instant action, failure to raise *Heck* as a defense in the answer does not preclude the Defendants from arguing the *Heck* doctrine in subsequent motions. The Plaintiffs' objection to use of the *Heck* doctrine is hereby overruled.

II. Section 1983 Claims Versus Habeas Relief

The Plaintiff contends that *Heck* does not apply because he was fined rather than imprisoned following his convictions for resisting arrest. The Plaintiff asks this court to allow his § 1983 claim to go forward because habeas relief is unavailable to the Plaintiff who is not in police custody.

In *Heck*, the Court determined that claims were not cognizable under § 1983 when the resolution of the claim would cast doubt on the validity of an outstanding criminal conviction or sentence. *Heck*, 512 U.S. at 486-87. Also known as the "favorable termination" requirement, all nine Justices agreed in *Heck* that it applied to § 1983 actions that might challenge an outstanding conviction or sentence, but the justices diverged on the reason for and extent of this

requirement. *Dible v. Maynard*, 410 F. Supp. 2d 807, 815 (N.D. Iowa 2006).[2]

The Court revisited the favorable termination issue in *Spencer v. Kemna*. *Spencer v. Kemna*, 523 U.S. 1 (1998). In *Spencer*, the plaintiff completed his imprisonment before the court ruled upon his habeas petition. *Id.* at 6. This led the Supreme Court to consider whether the expiration of his sentence mooted his habeas petition. *Id.* at 7. Speaking for the majority, Justice Scalia concluded that the petition was properly dismissed as moot because it failed to present a case or controversy as required by Article III, § 2 of the Constitution. *Id.* at 18. The plaintiff in *Spencer* contended that the petition could not be mooted because that would eliminate his opportunity to demonstrate favorable termination as required under *Heck*. *Id.* at 17. Justice Scalia dismissed this argument as a "great non sequitur, unless one believes (as we do not) that a § 1983 action for damages must always and everywhere be available." *Id.* However, the scope of Justice Scalia's statement is somewhat ambiguous in *Spencer* because Justice Souter's concurrence contends that *Heck* is inapplicable when the plaintiff is not in custody and thus lacks access to habeas relief. *Id.* at 20-21 (Souter, J., concurring).

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2. Although the court recognizes that the *Dible* case is not controlling, it provides a lengthy discussion of the current circuit split regarding § 1983 challenges for persons who are ineligible for habeas relief.

Appendix C

Lower courts are now left with the responsibility of determining the breadth of the favorable termination rule in light of *Heck* and *Spencer*. *Dible*, 410 F. Supp. 2d at 820. The circuit courts are split with respect to the favorable termination requirement for persons without access to habeas relief. *Id.* The *Dible* court explains the circuit split as follows:

> First, are those courts that find *Heck* directly controls this issue. Therefore, because *Spencer* did not overrule *Heck*, these courts conclude that a prisoner is not in custody within the meaning of the habeas statute or whose habeas action has been mooted upon his release from incarceration, remains nonetheless precluded from bringing a claim for damages under § 1983 under the language in *Heck*. Second, are those courts that follow Justice Souter's logic in *Spencer* and find that *Heck* did not affirmatively decide the issue, leaving these courts free to conclude that a prisoner without recourse under the habeas statute may bring an action under the broad scope of § 1983.

Id. at 820. The Fifth Circuit falls into the first camp. *Randell v. Johnson*, 227 F.3d 300, 301-02 (5th Cir. 2000). The Fifth Circuit concludes that a claim for damages under § 1983 is not cognizable under the plain language

of *Heck* unless the plaintiff can first demonstrate favorable termination. *Id.* at 301. The Fifth Circuit explains,

> [W]e decline to announce for the Supreme Court that it has overruled one of its decisions . . . We are mindful that dicta from concurring and dissenting opinions in a recently decided case, *Spencer v. Kemna*, may cast doubt upon the universality of Heck's 'favorable termination' requirement. The Court, however has admonished the lower federal courts to follow its directly applicable precedent, even if that precedent appears weakened by pronouncements in its subsequent decisions, and to leave to the Court 'the prerogative of overruling its own decisions.' We obey this admonition.

Id. (quoting *Figueroa v. Rivera*, 147 F.3d 77, 81 n.3 (1st Cir. 1998); citations omitted).

In the instant action, Mr. Walker was not in custody when he filed his claims under § 1983 so habeas relief was not available to him.[3] Consistent with the Fifth Circuit's opinion in *Randell*, this court must apply the plain language of *Heck*. In other words, a plaintiff must

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3. The court recognizes that Mr. Walker and the plaintiff in *Randell* were sentenced differently: Mr. Walker a fine versus Randell's incarceration. However, the effect *of Heck* on these cases is similar because neither party has access to habeas relief.

demonstrate favorable termination prior to asserting a claim under § 1983 if that claim would necessarily imply the invalidity of the outstanding conviction. *Id.* at 301. Therefore, this court will evaluate the Plaintiffs' claims under § 1983 in light of *Heck* and its favorable termination rule.

III. Excessive Force Claim

Courts have found that the *Heck* rule bars an excessive force claim under Louisiana law when the conviction in question is for resisting arrest. *See Arnold v. Town of Slaughter,* 100 Fed. Appx. 321, 325 (5th Cir. 2004). In *Arnold,* the plaintiff was charged and convicted of resisting an officer. *Id.* The plaintiff then brought claims under § 1983 for false arrest, unreasonable search and seizure, false imprisonment, malicious prosecution, and excessive force. *Id.* Although the *Arnold* court noted that an excessive force claim would not "invariably invalidate" a conviction, it held that the plaintiff's claim for excessive force was barred by *Heck v. Humphrey. Id.* at 323-25.

The plaintiff in *Arnold* was convicted of resisting arrest under La. R.S. § 1408 which required the prosecution to prove that the officers were making a lawful arrest. Therefore, success on the § 1983 claim would challenge the validity of the conviction for resisting arrest. *Id.* at 325. In light of this challenge, the *Arnold* court held that the plaintiff's claims were

"distinguishable from excessive force claims that survive *Heck's* bar." *Id.* at 324. The court reached this conclusion because:

> Arnold testified that he never attempted to strike any of the officers, never threatened any of them and, in fact, never resisted their attempts to arrest him.
>
> . . .
>
> Thus, Amold's claims are not that the police used excessive force after he stopped resisting arrest or even that the officers used excessive and unreasonable force to stop he resistance. Instead, Arnold claims that he did nothing wrong, but was viciously attacked for no reason.

Id. at 324. In the instant case, Mr. Walker's claims are similar to the arguments raised by the plaintiff in *Arnold.*

Mr. Walker was convicted in a Louisiana state court of three counts of resisting arrest and one count of failure to signal.[4] The three separate counts included: (1) "when he initially ran"; (2) "when he was captured, he continued to actively resist"; and (3) when he resisted

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4. *See* City Court of Denham Springs Court Minutes for July 30, 2007 (doc. 63 at Exh. I).

as "Corporal Walker attempted to cuff him."[5] During his trial in state court and in his deposition, Mr. Walker maintains that he remembers doing nothing wrong and that these officers just attacked him.[6] This was the same

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5. *See* Certified Transcript, *City of Denham Springs v. Walker*, No. 221366, July 30, 2007 (doc. 63 at Exh. H) at 16.

6. *See* Certified Transcript, *City of Denham Springs v. Walker*, No. 221366, July 30, 2007 (doc. 63 at Exh. H) at 95-97. Mr. Walker's testimony is as follows:

> Q. Okay. What happened once the car stops; did you get out of the car?
>
> A. Yes, ma'am, I waited for a minute, opened my door and got out. I was—that's when Officer—now that I know the officer, it was Officer Munsell was approaching the car, asked me for my license and registration.
>
> Q. Okay. So what did you do then?
>
> A. Leaned back in the car to get it.
>
> Q. What happened after that?
>
> A. I was struck from behind.
>
> Q. What do you recall after being struck from behind?
>
> A. Basically I—I remember hitting the ground. After that everything went—just became a blur because it—I was in shock. I was—I really couldn't place what was happening.

(Cont'd)

argument made in *Arnold* which the Fifth Circuit held was distinguishable from excessive force claims that survive *Heck's* bar.

To convict Mr. Walker of resisting arrest, the prosecution had to prove that the officers were making

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(Cont'd)

> Q. Okay. Did you run?
>
> A. No, ma'am, I don't believe I did.
>
> Q. The officer says as soon as he stopped, you got out of the car and started running.
>
> A. No, ma'am, I don't recall myself running.
>
> Q. Okay. What-at what point do you recall what was going on; I mean, are you kicked, punched, or anything happen [sic] like that?
>
> A. I remember being kicked in the side of the head and the right side of my hip, my face. Basically all over. it was just—I just felt like I was just getting beat on. Like I said, I started to hyperventilate, I blacked out after being sprayed. I wasn't able to see anything. My breathing was very hard.

Id. at 95-96. In his deposition testimony, the defendant similarly denies running the night of the incident, claims he was struck from behind while reaching into his vehicle to get his driver's license, and states he started hyperventilating after being sprayed.

a lawful arrest. Denham Springs Code § 66-293;[7] *see also, Arnold*, 100 Fed. Appx. at 325. An officer making a lawful arrest may use "reasonable force to arrest and detain a person and to overcome any resistance or threatened resistance of the person being arrested or detained." La. Code of Crim. Pro. art 220 (West 2001).

Mr. Walker denies any recollection of resisting arrest, and he also denies running away from the officers. Although the moving party bears the burden of summary judgment, the non-movant cannot rely on conclusory statements or unsubstantiated assertions to create a genuine issue of material fact. *See Grimes v. Tex. Dep't of Mental Health*, 102 F.3d 137, 139-40 (5th Cir. 1996). The Plaintiff attempts to rely on his lack of memory to create a genuine issue of material fact, but this lack of evidence does not satisfy the non-movant's burden.

Evaluating the evidence submitted by both parties, Walker's excessive force claim necessarily challenges the lawfulness of his arrest and his convictions for resisting arrest. To prevail on the excessive force claim, Mr. Walker would have to prove that the police officer

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7. Denham Springs Code § 66-293 defines resisting an officer to encompass: (a) Resisting an officer is the intentional interference with, opposition or resistance to, or obstruction of an individual action in his official capacity and authorized by law to make a *lawful arrest* or seizure of property to serve any lawful purpose of court order when the offender knows or has reason to know that the person arresting, seizing property or serving process is acting in his official capacity.

used unnecessary or unreasonable force, and such a finding would necessarily be at odds with a conviction for resisting arrest. Therefore, until the *Heck* favorable termination requirement is met, this Plaintiffs excessive force claim will be dismissed with prejudice.[8]

IV. Malicious Prosecution Claim

A claim for malicious prosecution requires the plaintiff to establish: "(1) the commencement or continuance of an original criminal or civil judicial proceeding; (2) its legal causation by the present defendant in the original proceeding; (3) its bona fide termination in favor of the present plaintiff; (4) the absence of probable cause for such proceeding; (5) the presence of malice therein; and (6) damage conforming to legal standards resulting to the plaintiff. *Jones v. Soileau*, 448 So. 2d 1268, 1271 (La. 1984).

As previously discussed, Mr. Walker was convicted in a Louisiana state court of three counts of resisting arrest and one count of failure to signal. Therefore, the Plaintiff cannot establish the requisite element of proving prior termination of the criminal proceeding in his favor. *Jones*, 448 So. 2d at 1271. Because the Plaintiff has failed to satisfy the favorable termination requirement of *Heck*, he fails to state a claim upon which

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8. The court recognizes that Mr. Walker lacks access to habeas relief. However, there is nothing precluding a direct appeal of the state court convictions, and a successful appeal would clearly satisfy the favorable termination requirements under *Heck*.

relief may be granted. *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000). Therefore, the Plaintiff's claim will be dismissed with prejudice until the *Heck* conditions are met.

V. Failure to Provide Medical Care Claim

As discussed in the court's August 24, 2007, ruling (doc. 58), the Plaintiffs' claim for lack of medical care is timely and not barred by the *Heck* doctrine. The Plaintiff's convictions for resisting arrest were temporally removed from the police's alleged failure to provide medical care, so a suit to recover damages for ignoring the Plaintiff's medical needs would in no way call into question the Plaintiff's convictions for resisting arrest.

Accordingly, the Defendants' renewed motion for summary judgment (doc. 59) is **GRANTED** with respect to the Plaintiffs' claims for excessive force and malicious prosecution, and Defendants' motion is **DENIED** with respect to the Plaintiffs' claim for failure to provide medical care. The Plaintiffs' excessive force and malicious prosecution claims are hereby dismissed with prejudice until the *Heck* conditions are satisfied.

Baton Rouge, Louisiana, October 1st, 2007

s/ James J. Brady
JAMES J. BRADY, JUDGE
MIDDLE DISTRICT OF LOUISIANA

APPENDIX D — RULING ON MOTION TO DISMISS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA FILED AUGUST 24, 2007

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO.: 06-867-JJB-SCR

CLAYTON ANTHONY WALKER, ET AL.

VERSUS

OFFICER RUSS MUNSELL, ET AL.

RULING ON MOTION TO DISMISS

This matter is before the court on a motion to dismiss the §1983 claims asserted by the plaintiff (doc. 40) filed by defendants Russ Munsell, David Hooter, and Rodney Walker.[1] The plaintiffs, Clayton Anthony Walker, et at., filed an opposition (doc. 49), and the defendants filed a reply brief (doc. 54). The court's jurisdiction exists pursuant to 28 U.S.C. § 1331.

The plaintiff asserts causes of action for violation of his civil rights under 42 U.S.C. § 1983 including: (1) unreasonable search and seizure and excessive force;

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1. This Court dismissed all claims against officers Gerald Parker and John Albritton on April 5, 2007 (doc. 33).

(2) deprivation of his Fourteenth Amendment to be free from malicious prosecution; and (3) violation of his substantive due process rights under the Fourteenth Amendment based on the defendants' alleged failure to tend to the plaintiff's medical needs as a pretrial detainee.

Heck v. Humphrey Standard

Under the rule of *Heck v. Humphrey,* a plaintiff seeking to recover for alleged constitutional violations with respect to conviction, imprisonment, or other harms caused "whose unlawfulness would render a conviction or sentence invalid . . . must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey,* 512 U.S. 477, 486-87 (1994). A claim for damages which is related to a conviction or sentence that has not been invalidated is not cognizable under §1983. *Id.* at 487. Thus, the *Heck* rule reinforces the principle that "civil tort actions are not appropriate vehicles for challenging the validity of criminal judgments." *Bush v. Strain,* 2004 U.S. Dist. LEXIS 9358, *7 (E.D. La. 2004).

Appendix D

Analysis

The plaintiff's claims for (1) excessive force and (2) malicious prosecution may be barred by the doctrine of *Heck v. Humphrey.* However, this court has no way of determining whether to dismiss these claims because the court has not been apprised of the outcome of the plaintiff's state court suit for resisting arrest.[2] Until this court is informed of the outcome of the state trial, it will refrain from ruling on the defendants' motion to dismiss the plaintiff's claims for excessive force or malicious prosecution.

The plaintiffs claim for failure to provide medical care is clearly not barred by the ruling in *Heck v. Humphrey.* The plaintiff's allegations regarding the lack of medical attention he received while detained are unrelated to the resolution of his state law charges of resisting arrest. The alleged misconduct took place long after the arrest was completed, so success on the plaintiff's medical claim would not imply the invalidity of any pending or current convictions. Therefore, in order for this claim to be cognizable under § 1983, the plaintiff need not prove that his convictions or sentences were reversed, expunged, invalidated, or otherwise called into question. As the Supreme Court has noted, "absent some other bar to suit, a claim either is cognizable under § 1983 and should immediately go forward, or is not cognizable and should be dismissed."

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2. The briefs indicate that the plaintiff's state court trial on charges of resisting arrest was scheduled for July 30, 2007.

Edwards v. Balisok, 520 U.S. 641, 649 (1997). This claim is immediately cognizable and has been brought in a timely manner. Therefore, this court will allow this claim to go forward without further delay.

Accordingly, the defendants' motion to dismiss (doc. 40) is **DENIED** with respect to the plaintiff's failure to provide medical care claim, and this court will withhold ruling on the plaintiff's other claims until this court is notified of the results of the plaintiff's trial in state court.

Baton Rouge, Louisiana, August 24th, 2007.

s/ James J. Brady
JAMES J. BRADY, JUDGE
MIDDLE DISTRICT OF LOUISIANA